

Sec. 8-1. - Purpose and intent.

- (a) The purpose of this article is to regulate, control and promote the planting of trees, to encourage the protection of existing trees in the streets and public grounds within the city, to regulate the preservation, replacement and indiscriminate removal of trees on private property, both on unimproved lands and on land which has heretofore been improved to any extent whatsoever, and to establish procedures and practices for fulfilling these purposes, thereby promoting the public health, safety and general welfare of the citizens of the City of Gulfport and contributing to the quality of life by encouraging the preservation of the urban forest canopy and its various resources to ensure sustainable development practices within the City.
- (b) The intent of this article is to encourage the protection of existing trees and to promote the planting of additional trees in order to facilitate the control of soil conservation, air pollution and noise, to assist in the management of on-site storm water flows and water quality enhancement, minimize the destruction of wooded wetlands, and to enhance the beauty, health and safety of the environment for the city.
- (c) These regulations are enacted by the City to protect the health safety and welfare of its citizens in the following ways:

 - 1. Maintaining and protecting property values;
 - 2. Providing an acceptable degree of transition between abutting uses;
 - 3. Providing appropriate barriers and visual screens and relief from traffic, noise, heat, glare and the spread of dust and debris;
 - 4. Enhancing the visual and aesthetic appearance of the community;
 - 5. Preserving terrain native habitat and vegetation where possible;
 - 6. Protect and preserve native trees of certain species and size and mitigate the removal of other native trees;
 - 7. Facilitate the control of soil conservation, air pollution and noise and to enhance the beauty, health and safety of the environment for the City;
 - 8. Provide protection to structures in and during high-wind events by contributing to the reduction of wind speeds;
 - 9. reduce topsoil erosion, prevent harmful land pollutants contained in the soil from getting into our waterways, slow down water run-off, and ensure that our groundwater supplies are continually being replenished;
 - 10. Minimize energy use with properly located canopy trees.

Sec. 8-2. - Tree protection advisor.

The position of tree protection advisor is hereby created, who shall direct, regulate and control the care and necessary removal of all trees existing now and hereafter in the city.

The tree protection advisor shall be a certified arborist or a horticulturist or shall hold a minimum of a bachelors degree in Landscape Architecture or Horticulture. The arborist/horticulturist shall take active steps to process and render decisions granting or denying applications for permits under this article. Any decisions of the tree protection advisor, as authorized herein, shall be final unless an appeal is submitted to the city planning commission.

Sec. 8-2.1. - Creation of tree advisory board.

- (a) *Established.* A tree advisory board is hereby created and established. The board shall consist of three voting (3) members, each appointed for a term of four (4) years by the mayor. Of the members first appointed, one (1) shall be for a term of two (2) years, one (1) for a term of three (3) years and one (1) for a term of four (4) years. Vacancies shall be filled by the mayor for the unexpired term of the member affected. All voting members of the Board shall serve without pay. The Tree Protection Advisor shall be a non-voting ex-officio member of the Board.
- (b) *Proceedings.* The tree advisory board shall adopt rules for the conduct of its affairs and in keeping with the provisions of this section. Meetings shall be held a minimum of four (4) times during the calendar year and at such other times as the board may determine. All meetings of the board shall be open to the public. The commission shall elect a chairman, vice-chairman and standing committee chairs. A majority of the voting members of the board shall constitute a quorum for the transaction of business. Any member who regularly fails to attend scheduled meetings will be subject to removal by the Chairman and will be replaced for the balance of his/her term by the Mayor.
- (c) *Purpose.* The tree advisory board shall serve an advisory function to the mayor, city council and planning commission in the areas of tree preservation, tree promotion and related activities.
- (d) *Responsibilities.* The responsibilities of the tree advisory board are but are not limited to the following:
 - (1) Development of and periodic revision to a comprehensive community tree management program for the care of trees on public property.
 - (2) Development of a self-financed annual community work plan for trees on public property.
 - (3) Development of and periodic revision to a comprehensive inventory of protected trees on public property, including species, location and condition of each tree.
 - (4) Draft an Arbor Day proclamation for the mayor to proclaim the first week of April as *Arbor Week*.
 - (5) Develop and administer citizen support for the preservation and promotion of trees and related activities.
 - (6) Develop recommendations to regulate, control and promote the planting of trees and to encourage the protection of existing trees in the streets and public property within the city.
 - (7) Study the urban forest and develop an annual report stating an objective analysis of the present state of the urban forest with recommendation for future management.
 - (8) Propose such legislation as may be needed to pursue the purposes for which the Board was created.
 - (9) Engage in any other lawful activity in pursuit of the mission of this board which may benefit the urban forest in the City including such activities as:
 - a. Apply for and/or ensure maintenance of Tree City Status with the National Arbor Day Foundation.
 - b. Conduct seminars and public education programs.
 - c. Develop a community tree bank.
 - d. Organize community tree planting projects.
 - e. Seek grant money, public funding and private contributions to further the work of the board.

Sec. 8-3. - Definitions.

As used in this article, the terms herein shall be defined as follows:

Caliper: The diameter of any tree trunk thirty-six (36) inches above ground level.

Destroy: Any intentional or negligent act which causes a tree to decline and die, including, but not limited to, such damage inflicted upon the root system of a tree by the application of toxic substances, the operation of heavy machinery, the change of natural grade by excavation or filling the covered area or around the trunks of a tree, trenching, paving with concrete, asphalt or other impervious materials and damages from injury or from fire inflicted on trees which result in or permit pest infestation. Cutting, grilling, injecting, bulldozing and excessive pruning that result in the death of a tree are also considered destruction.

Drip line: A vertical line running through the outermost portion of a tree crown extending to the ground.

Protective barrier: A physical structure limiting access to a protected tree, composed of wood or other suitable materials, which assures compliance with the intent of this article.

Residual density: The number of natural trees growing on an existing lot or site that is expressed as the actual number of trees per square foot of area.

Tree, protected: Any woody, perennial, hardwood plant that is either a live oak (*quercus virginiana*), southern magnolia (*magnolia grandiflora*), swamp chestnut oak (*quercus michauxii*), sweet bay (*magnolia virginiana*), sweetgum (*liquidambar styraciflua*), overcup oak (*quercus lyrata*), shumard oak (*quercus shumardii*), nuttall oak (*quercus texana*), American holly (*Ilex opaca*), bald cypress (*taxodium distichum*), red maple (*acer rubrum*), willow oak (*quercus phellos*) that has a single or multiple trunk with a total caliper trunk of eight (8) inches or a circumference of twenty-five (25) inches or more.

Tree, replacement: A tree of the same species as that of the protected tree having a minimum one and one-half (1½) inch caliper nursery stock with a minimum height of seven (7) feet after planting.

Tree removal: The displacement, removal, relocation, alteration or effective removal as a result of damaging or destroying any protected tree.

Sec. 8-4. - Application of provisions.

The provisions of this article shall apply to protected trees that are located on any real property that is located or lying within a district that has been designated on the Gulfport Comprehensive Zoning District Map as follows:

- (a) An industrial district;
- (b) A business district;
- (c) A residence district provided that the development (multifamily) exceeds ten (10) units per acre;
- (d) A residence district for all other residential uses occupying an area of two (2) or more acres; or
- (e) All districts (i.e., industrial, business, residence) with respect to protected live oaks and southern magnolias, with the exception of those live oaks and southern magnolias located on lots or parcels less than one (1) acre in size that are developed with an owner-occupied single-family home.

Sec. 8-5. - Permits—Required.

- (a) *Tree removal.* It shall be unlawful for any person, without first obtaining a permit to do so as herein provided, to remove, cause to be removed, relocate or substantially alter or to effectively remove as a result of damaging or destroying any protected tree. It shall be unlawful for any licensed tree surgeon, service company or general contractor to remove, cause to be removed, relocate or substantially alter or to effectively remove as a result of damaging or destroying any tree covered by the terms and provisions of this article without first having in its possession a proper permit authorizing the removal of said tree. Upon the second violation of the terms and provisions of this article by any licensed tree surgeon, service company or general contractor, the mayor and city council shall, after investigation by the tree protection advisor and upon subsequent recommendation to them, revoke for a period of six (6) months the city privilege license of said tree surgeon, service company or general contractor.
- (b) *Site plans for development or redevelopment.* A site plan for the development or redevelopment of any tract of land located in the city shall be submitted to the city, along with the application for a building permit, prior to the removal of any tree as herein defined. No building permit shall be issued until the tree site plan has been reviewed and approved in writing by the tree protection advisor, and a permit as provided is issued or denied within fourteen (14) working days of submittal. Reasons for denial shall also be reported to the applicant in writing. If the applicant is not notified of approval or disapproval within fourteen (14) working days, such plans shall be considered approved, and such permit shall be considered issued by the tree protection advisor through the Department of Urban Development . The tree site plan must show, in addition to the usual requirements, the following information at a scale sufficient to enable the determination of matters required under these regulations:
- (1) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of structures and improvements if any.
 - (2) Location and dimensions of all protected trees identified by common or botanical name. Trees proposed to remain, to be relocated or to be removed shall be so identified. Groups of trees in close proximity, three-foot spacing or closer, may be designated as a "clump" of trees and a predominant species, estimated number and average size listed.
 - (3) A statement showing how trees not proposed for removal are to be protected during land clearing and construction, i.e., a statement as to proposed protective barriers as defined in section 8-3.
 - (4) Statement as to grade changes proposed for the lot or parcel, and how such changes will effect these regulations.
 - (5) Any proposed tree replacement program.
 - (6) The tree protection advisor may require the applicant to furnish additional information as he deems necessary and appropriate to properly analyze the application.

The function of the tree protection advisor in the review of the site plans will be to assure that protected trees are preserved and retained within the city. A permit from the tree protection advisor is required for any work on or affecting trees covered by the provisions of this article. The tree protection advisor shall specify the work to be done and may inspect the work in progress and make a final inspection upon the completion of the work as necessary. The Director of Urban Development (or designee) shall have concurrent authority to enforce the regulations of this article in the event that the tree protection advisor is unable to inspect any work for the purpose of ensuring compliance with this article.

- (d) *Building moving permits.* The tree protection advisor, along with any other affected city departments, shall review and approve or disapprove all applications for building moving permits to ensure that such movement will not endanger any tree specified in this article.

Sec. 8-6. - Same—Application.

Any person required by this article to obtain a tree permit shall make a written application to the tree protection advisor through the planning administrator. The filling [filing] fee will be based on the total number of trees being reviewed by the tree protection advisor. The cost for filling [filing] fee:

RESIDENTIAL AND COMMERCIAL (IMPROVED)

One tree: \$25.00

Each additional tree: \$10.00

Maximum Charge: \$250.00 per half acre of property included in tree review

RESIDENTIAL AND COMMERCIAL (UNIMPROVED)

One tree: \$35.00

Each additional tree: \$15.00

Maximum Charge: \$350.00 per half acre of property included in tree review

Where an application as required by this article has been submitted, no permit shall be issued until a tree site plan for the lot or parcel has been submitted by the applicant to the tree protection advisor and reviewed and approved by the tree protection advisor. Upon a proper showing by the applicant of extreme hardship due to causes unrelated to the acts or omissions of the applicant, the tree protection advisor in his discretion may waive all or part of the requirements for the tree site plan submission.

Sec. 8-7. - Same—Criteria for issuance.

After the application is filed with the building department, the tree protection advisor shall consider the following criteria in the approval or denial of a tree permit for the removal, relocation or substantial alteration of a protected tree:

- (1) The condition of the tree or trees proposed to be removed with respect to disease, insect attack, danger of falling, proximity to existing or proposed structures and interference with utility services.
- (2) The necessity of removing the tree or trees in order to construct the proposed improvements or structures to allow reasonable economic use of the property.
- (3) The effect of removal on erosion, soil moisture retention, flow of surface waters and coordination with the drainage system plan of the city.
- (4) The number and density of trees in the area, and the effect of tree removal on property values of the neighborhood and other existing vegetation.
- (5) Whether any tree proposed to be removed is worthy of preservation.
- (6) Impact upon the urban and natural environment, including:
 - a. Whether tree removal would substantially alter the water table or affect the stability of ground and surface water.
 - b. Whether tree removal would affect water quality and aquifer recharge by reducing the natural assimilation of nutrients, chemical pollutants, heavy

- metals and other substances from ground and surface waters during the movement of water towards an aquifer or natural stream.
- c. Whether tree removal would have an adverse impact upon existing biological and ecological systems.
 - d. Whether tree removal would affect noise pollution by increasing source noise levels to such a degree that a public nuisance or violation of noise control would occur.
 - e. Whether tree removal will affect air movement by significantly reducing the ability of existing vegetation to reduce wind velocities.
 - f. Whether tree removal will affect quality by significantly affecting the natural cleansing of the atmosphere by vegetation.
 - g. Whether tree removal will affect wildlife habitat by significantly reducing the habitat available for wildlife existence and reproduction or causing the emigration of wildlife from adjacent or associated ecosystems.
- (7) The ease with which the applicant can alter or revise the proposed development or improvement to accommodate existing trees.
 - (8) The economic hardship that would be imposed upon the applicant were the permit denied.
 - (9) The heightened desirability of preserving tree cover in densely developed or densely populated areas.
 - (10) The need for visual screening in transitional zones or relief from glare, blight, commercial or industrial ugliness or any other visual affront.
 - (11) Whether the continued presence of the tree or trees is likely to cause danger to a person or property.
 - (12) Whether the topography of the area in which the tree or trees are located is of such a nature to be damaging or injurious to trees.
 - (13) Whether the removal of the trees is for the purpose of thinning a heavily wooded area where some trees will remain.

Sec. 8-8. - Same—Tree relocation or replacement.

As a condition to the granting of a tree removal permit, the applicant may be required to:

- (1) Relocate those protected trees which would otherwise be destroyed to another location upon the site; or
- (2) To replace those protected trees which will be destroyed with suitable replacement trees elsewhere within the site. In determining the required relocation or replacement of trees, the tree protection advisor shall consider the needs of the intended use of the property, including all lands dedicated to public use, together with an evaluation of the following:
 - a. Existing tree coverage on the site and in the immediate surrounding area.
 - b. The number of trees to be removed on the entire site.
 - c. The type, size and condition of the tree(s) to be removed.
 - d. The area to be covered with structures, parking and driveways.
 - e. The feasibility of relocating the particular tree or trees.
 - f. The topography and drainage of the site.
 - g. The extent to which the tree(s) contribute to the aesthetic, economic and environmental integrity of the surrounding area.

Each replacement tree shall have characteristics comparable to those of the protected tree removed and shall be a minimum of one-and-one-half-inch caliper nursery stock, seven-foot minimum height after planting. The type of replacement trees and location of relocated or replacement trees shall be identified by the tree protection advisor prior to the issuance of a tree permit. Each replacement tree shall enjoy the same protection as any protected tree with a total caliper trunk of eight (8) inches or a circumference of twenty-five (25) inches or more. Each replacement tree shall be replaced at a minimum of a one-to-one ratio.

Where a tree on a lot with existing improvements is dead or is dying due to natural causes (i.e., disease, insect attack, lightning, natural disaster) and is approved by the Tree Protection Advisor for removal, the Tree Protection Advisor may recommend that replacement trees be planted, but may not require that such trees be planted.

A replacement tree that dies within one year of its planting for whatever reason including, but not limited to, lack of care, shall, likewise, be replaced by a new replacement tree that conforms to the requirements of this article.

Where the residual density of natural trees (any species with a total caliper trunk of two (2) inches or six and one-quarter (6.25) inches in circumference or larger) in any lot or site is greater than the standards listed below, the requirement for replacement trees to be planted will be waived. If the residual density of natural trees is less than the standards listed below, the property owner or developer will be required to plant trees to the proper density.

Site Area (square feet)	Required Trees
0 to 10,000	1 tree/1,000 sq. ft.
10,000 to 110,000	10 trees for first 10,000 sq. ft., plus 1 tree/2,500 sq. ft. over 10,000 sq. ft.
Over 110,000	50 trees for first 110,000 sq. ft., plus 1 tree/5,000 sq. ft. over 110,000 sq. ft.

Sec. 8-9. - Same—Trimming, pruning, planting and removal of trees on public property.

(a) Except as provided herein, any person desiring to remove, destroy, cut, severely prune, including the root system, or treat any tree in and upon any public street or public property owned by the city, its agencies, boards, authorities and commissions, shall first obtain a written permit from the tree protection advisor. Any work performed under such permit must be done in strict accordance with the conditions of the permit and the provisions of this article.

(b) Individual permits shall not be required of public and private utility companies which install overhead and underground utilities (including cable television and water and sewer installations by or at the direction of the public works department); provided that a determination is made that the services provided by them are necessary for the general health, safety and welfare of the citizens of the city. Their actions that would ultimately result in the destruction of any tree designated by this article shall be limited to the amount necessary in order to provide such utility service. The companies' written pruning and trenching specifications along with specific site location shall be reviewed by the tree protection advisor for their comments.

(c) Any person desiring to plant a tree upon any public street or public place must also obtain a permit from the tree protection advisor. However, before the issuance of a permit to plant, the request must also be reviewed by the Superintendent of Traffic Control and Safety to determine if the proposed planting would create a sight distance hazard for traffic. The filing fee of ten dollars (\$10.00) will be waived in obtaining this permit.

Sec. 8-10. - Injuring trees in public places.

(a) It shall be unlawful for a person, except with a written permit, to place or maintain upon the ground in any public street or public place any stone, cement or other impervious matter or substance in such a manner as may obstruct the free access of air and water to the roots of any tree in any such street or place.

(b) It shall be the responsibility of the person in charge of the erection, repair, alteration or removal of any building or structure to place a guard or protector around any tree on public ground so as to prevent injury to such tree arising out of such erection, repair, alteration or removal. If the erection, repair, alteration or removal of any structure shall require the trimming, pruning or removal of any tree upon public ground, a written permit shall be obtained as provided in section 8-8.

(c) It shall be unlawful for any person to attach to any tree in and upon any public street or public place, or to the guard or stake intended for the protection of such tree, any rope, wire, chain, nails, advertisement, poster, sign or other device whatsoever except for the purpose of protecting it.

(d) No person shall intentionally damage, cut carve, transplant or remove any tree in and upon any public street or public place.

(e) No person shall deposit, place, store, or maintain upon any public place of the municipality, any stone, brick, sand, concrete or other materials which may impede the free passage of water, air, or fertilizer to the roots of any tree growing therein. Sunlight to any public tree cannot be permanently blocked by placement of materials without written authorization of the Tree Protection Advisor.

Sec. 8-11. - Trimming of trees adjacent to public property.

Trees standing in or upon any lot or land adjacent to any public right-of-way or public place and having branches, limbs, trunks or other parts projecting into the public right-of-way or place which have been determined by the city Superintendent of Traffic Control and Safety or his designee to interfere with the free and safe passage and line of sight along the public way by pedestrians and vehicular traffic may be kept trimmed by the city.

Where a particular tree requires trimming or pruning for a second consecutive year in order to allow for free and safe passage and line of sight along the public way, the City may proceed in accord with Section 21-19-11 of the Miss. Code Ann., as amended, to protect the public health, safety and welfare of the community by having the tree trimmed and/or pruned and/or cut. Alternatively, the City may proceed via appropriate processes for the Environmental Court to compel trimming of the limbs, branches or tree trunks.

Sec. 8-12. - Construction near trees.

During construction, the builder shall be required to erect suitable protective barriers around all such protected trees to be preserved. Excluding sidewalks and driveways, no person shall pave with concrete, asphalt or other impervious material within five (5) feet of the outside

diameter of any tree. If necessary, the tree protection advisor will require additional footage beyond the minimum requirement of five (5) feet from the outside diameter of any protected tree to prohibit any impervious materials. During construction, no attachments or wires other than protective guy wires shall be attached to any trees. Filling under the spread of limbs of any protected trees is hereby limited to one (1) inch of soil unless protective measures are taken as approved by the tree protection advisor.

Sec. 8-13. - Restricted trees.

No tree shall be allowed to grow in such a manner as to interfere with the visibility of vehicular traffic thereby creating a situation that is dangerous to the public health, safety and welfare. Such determination shall be made by the city Superintendent of Traffic Control and Safety and/or his designee; and, upon a finding of interference, such tree may be trimmed or removed as allowed in section 8-11 above.

Sec. 8-14. - Temporary waiver following disaster.

In case of emergencies, such as windstorms (including hurricanes, tropical storms or other tropical systems), ice storms, fire or other disasters, the requirements of this article may be waived by the mayor and city council during the emergency period so that the requirements of this article would in no way hamper private or public work to restore order in the city. This shall not be interpreted to be license to circumvent the intent of this article.

Sec. 8-15. - Permit exemptions.

- (a) All tree nurseries that are legally recognized by the city shall be exempt from the terms and provisions of this article only in relation to those trees which are so planted and growing for the sale or intended sale to the general public in the ordinary course of business or for some public purpose.
- (b) All groves of trees in active commercial operation shall be exempt from the terms and provisions of this article for bona fide agricultural purposes only.
- (c) The removal of trees on public rights-of-way conducted by or on behalf of a federal, state, county, municipal or other governmental agency in pursuance of its lawful activities or functions in the construction or improvement of public rights-of-way shall be exempt from the terms and provisions of this article.

Sec. 8-16. - Enforcement of article.

The tree protection advisor and the building department shall be charged with the enforcement of this article. For the purpose of enforcement, the tree protection advisor and the Director of Urban Development or designee are hereby empowered to ensure that the provisions of this article are not violated, including the issuance of citations for the violations of any provisions of this article. The tree protection advisor or their authorized designee and the building official may periodically inspect sites subject to the provisions of this article.

If, through inspection, it is determined that a person has failed to comply with the provisions of this article, a notice to comply shall be served upon that person by certified mail from the tree protection advisor or the Director of Urban Development. The notice shall set forth all the provisions which will be necessary to comply with this article.

The tree protection advisor and the Director of Urban Development shall have the power to conduct such investigations as deemed reasonably necessary to carry out duties as

prescribed in this article and, for such purpose, may enter at reasonable times upon any property, public or private, for the purpose of inspecting the sites subject to the provisions of this article. No person shall refuse entry or access to the tree protection advisor or their authorized representative and the building official who may request entry for the purpose of inspections, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with such representative while in the process of carrying out their official duties.

Sec. 8-17. - Variances and appeals from the decision of the tree protection advisor.

(a) A variance from the provisions of this article may be considered by the planning commission in cases of unusual circumstances and special conditions where the literal enforcement of the provisions of this article would result in depriving the property owner of the reasonable use of land.

(b) In the event that any person is dissatisfied with a decision of the tree protection advisor adversely affecting such person involving the application of this article, such person may appeal to the city planning commission by filing written notice thereof with the planning commission, and with a copy to the tree protection advisor, within fifteen (15) days after the decision of the tree protection advisor. The planning commission shall hear any complaints of such person; and, after a full and complete hearing, the commission shall render its opinion affirming, overruling or modifying the decision of the tree protection advisor based upon the criteria set forth in section 8-6. Each appeal shall be accompanied by a fee of seventy-five dollars (\$75.00) to cover the cost of publishing and mailing notices of such hearing.

The planning commission shall prepare a record of its proceedings for each case, showing the grounds for its decision. The record shall be filed in the office of the planning commission and shall be available to the public for review.

(c) Any person or any officer, department or agency of the city aggrieved by any decision of the planning commission may, within fifteen (15) days thereafter, appeal to the city council by filing with the minutes clerk of the city council a written notice of appeal specifying the decision from which the appeal is taken. In case of such appeal, the planning commission shall cause a certified transcript of the proceedings in the case to be filed with the city council; and the matter will be heard on said transcript, the cost of said transcript to be borne by said appellant.

(d) Any person feeling aggrieved at the findings and decisions of the mayor and city council shall have the right to appeal to a court of competent jurisdiction and shall be governed by applicable statutes of the State of Mississippi.

Sec. 8-18. - Penalties.

It shall be unlawful for any person, firm, organization or society to violate the provisions of this article. The removal or destruction of each protected tree shall constitute a separate offense under this article, and said violation shall be punishable in accordance with section 1-9 of this code.

Sec. 8-19. - Conflict with other laws.

Whenever the requirements of this article are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern. |